



AMERICAN BENEFITS
COUNCIL

June 19, 2012

The Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Dear Chairman Schapiro:

I am writing on behalf of the American Benefits Council (the "Council") to express concerns of the Council's members about the Securities and Exchange Commission's potential proposal to alter, in fundamental ways, the regulation of money market funds. The changes that the Commission is reportedly considering could have a significant and adverse impact on retirement plans that employers offer their workers, and thus on Americans' preparedness for retirement.

The Council is a public policy organization principally representing Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

Sponsors of defined contribution and defined benefit plans, such as 401(k) and pension plans, use money market funds in a number of important ways. These funds are valued for their stable net asset value (NAV) and for their full liquidity. Americans saving for their retirement through these plans at work, in turn, value these funds for their stability, low volatility, and diversified, low-cost access to the commercial paper, government securities, and other money market instruments.

Shaping the World of Corporate Benefits Policy

Department of Labor regulations require participant-directed plans that want to satisfy section 404(c) of ERISA to make investments available with a range of risk/reward characteristics. Under these regulations, the plan must offer a low risk investment. Money market funds serve this role in many plans — surveys of plan sponsors suggest more than half of plans include them in their investment menus.

While most 401(k) savers focus their savings in long-term investments like equities, money market funds play an important diversification and capital preservation roles, particularly as a worker nears retirement and prepares to withdraw money from the plan. According to Investment Company Institute data, as of year-end 2011, Americans held \$375 billion in money market funds through 401(k) and similar defined contribution plans and IRAs.

Defined benefit pension plans — like other institutional investors — use money market funds for their stable pricing and full liquidity. A plan fiduciary, to comply with ERISA, must manage the plan's assets consistent with the purposes and needs of the plan, which typically means some portion of the plan's trust must be available for short-term cash needs. Pension plans, like many other institutional investors, have ongoing and critical liquidity needs. Each month they send benefit checks to retirees and hold funds in a liquid form for investment purposes. Holding those assets in more volatile, less liquid investments would introduce additional uncertainty for defined benefit plans, and would make investment planning and plan funding strategy less predictable.

Both defined contribution and defined benefit plans use money market accounts to ease administration, as well. For example, plans with vesting schedules generally hold forfeitures in a forfeiture account, often invested in money market funds.¹ Internal Revenue Service guidance requires these forfeiture accounts to be used fully for plan expenses or plan benefits, or allocated to individual accounts of participants.

Money market investments are also often used to provide liquidity in unitized funds. For example, a plan offering investments in employer securities may unitize that investment to ease transactions between those investments and mutual fund investments, where investment transactions settle at different times. The money market component in a unitized fund allows for daily processing of transactions. Holding a portion of a unitized fund in money market investments can also ease volatility in unitized funds due to investment and redemption requests.

In 2010, the Commission enhanced the rules for money market funds to improve their liquidity and transparency. These reforms have generally been viewed as helpful and positive steps. We understand that the Commission is considering further, more significant, changes to money market fund regulation. For example, concerns have

¹ Forfeitures arise when plan participants cease plan participation before becoming fully vested in their retirement plan accounts.

been raised that the Commission may require either that a money market fund's NAV "float" on a daily basis or that the fund would be required to hold back some percentage of an investor's shares as a "liquidity fee" for 30 days when an investor redeems their shares.

We believe these changes will alter the fundamental characteristics of money market funds, namely their stable pricing and full liquidity. This could have unexpected adverse effects on plans that use these important investment vehicles. For example, defined benefit plan fiduciaries may exit money market funds because they no longer meet the plan's needs for ready liquidity. Further, these changes could cause difficulties for ERISA fiduciaries that the Commission has not considered. Shares "held back" or restricted would continue to be considered ERISA "plan assets." The proposal under consideration, we understand, would require that "held back" or restricted shares would be used to make the fund whole if a fund cannot maintain its \$1.00 NAV (commonly referred to as "breaking the buck" or "breaking the dollar"). It simply is not clear that an ERISA fiduciary could allow the plan's assets to be invested under these conditions consistent with regulation of plan assets under ERISA.

In addition, any proposed liquidity fee would pose significant operational problems for the recordkeeping of 401(k) plans. Participants taking distributions from money market investments would need to receive another check, with attendant processing, mailing and tax reporting associated with a plan distribution. Similarly, requiring forfeiture accounts to hold back amounts from distribution could limit or eliminate the ability to use money market funds in such accounts. Plan recordkeepers holding money market investments in an omnibus account (that is, an account aggregated at the recordkeeper level) would be required to track the individual hold back for each plan (or participant) on a daily basis. Even if recordkeeping systems could be developed to implement such tracking, the costs of doing so would be prohibitive. If forfeiture accounts could not be fully used to fund plan benefits or pay plan expenses, the plan could violate IRS requirements. Administrative uses of money market funds in unitized funds and other contexts where predictability and liquidity are sought would also be hampered, if not eliminated, if either a floating NAV or liquidity holdback were implemented.

Finally, we have significant concern that if these major regulatory changes are put in place, employers will be left without a viable alternative to money market funds that can meet the needs of the plan and its participants — particularly the need for low-cost cash management.

We ask that the Commission take into consideration the effect any proposal will have on employers who sponsor retirement plans, and on workers who depend on these plans for a safe and secure retirement. We very much appreciate your consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "Lynn Dudley". The signature is written in a cursive, flowing style.

Lynn Dudley
Senior Vice President, Policy

cc: Luis A. Aguilar, Commissioner
Daniel M. Gallagher, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
~~Eileen Rominger, Director, Division of Investment Management~~
Robert E. Plaze, Deputy Director, Division of Investment Management